

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

CARD & PARTY GIANT V, LTD., d/b/a)	
CARD & PARTY GIANT,)	
)	
Plaintiff,)	18 cv 7995
)	
vs.)	Honorable Charles R. Norgle
)	Magistrate Hon. Young B. Kim
RUBIE’S COSTUME COMPANY, INC.,)	
)	JURY TRIAL DEMANDED
Defendant.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff, CARD & PARTY GIANT V, LTD., d/b/a CARD & PARTY GIANT, by and through its attorneys, SEIDEN NETZKY LAW GROUP, LLC, complains against Defendant, RUBIE’S COSTUME COMPANY, INC., attaching the following exhibits:

Group Exhibit A	A sampling of Defendant’s invoices to Card & Party
Exhibit B	Defendant’s Website Showing Plaintiff as Authorized Retailer
Exhibit C	Amazon Seller Central Amazon Services Business Solutions Agreement
Exhibit D	Amazon Brand Registry Progress Report
Exhibit E	Amazon Seller Central Intellectual property for Rights Owner
Exhibit F	Communications with Amazon US – Brand Approval Request for Rubie’s
Exhibit G	Amazon Seller Central Amazon Intellectual Property Policy
Exhibit H	Amazon’s Selling Application for Brand (Rubie’s)
Exhibit I	Example of a previous sale of Defendant’s brand on Amazon

and stating as follows:

NATURE OF THE ACTION

1. This is an action that arises out of the unlawful restraints, tortious interference, and deceptive trade practices by RUBIE’S COSTUME COMPANY, INC. (“Defendant”) upon CARD & PARTY GIANT V, LTD., d/b/a CARD & PARTY GIANT (“Card & Party”), a local retail party supply and Halloween costume shop, and its relationship with Amazon Marketplace, LLC (“Amazon”)—one of the largest marketplaces in the world.

2. After selling hundreds of thousands of dollars’ worth of Halloween costumes to Card & Party for several decades, Defendant has abused its power as a dual-distributor, and, through deceit, has misled Amazon into wrongfully excluding Card & Party access to sell those same costumes on Amazon’s online marketplace. Defendant has done so by misrepresenting to Amazon that Card & Party is not an authorized retailer of the Defendant’s brand of costumes, knowing this communication to be untrue.

3. In an effort to curb competition and interrupt the relations between Card & Party and Amazon, Defendant has misused Amazon’s Brand Registry, as well as Defendant’s intellectual property rights, as a way to exclude Card & Party from access to Amazon (which in turn excludes Card & Party from access to consumers) whereby Card & Party would sell Defendant’s brand of costumes.

4. Defendant, while allowing other retailers to sell on the Amazon Marketplace, has explicitly communicated to Card & Party that its reasoning for refusing access to sell on the Amazon Marketplace was because Card & Party has not purchased costumes from the Defendant in the last several years, which reasoning is itself unlawful as a tying arrangement, false, and is explicitly disavowed under Amazon’s Brand Registry policies.

PARTIES

5. Plaintiff, Card & Party, is a corporation organized under the laws of Illinois with its principal place of business located in Glenview, Cook County, Illinois.

6. Card & Party is engaged in operating a local retail party supply and Halloween shop, as well as an online website located at www.cardandpartygiant.com.

7. Defendant, Rubie's Costume Company, Inc., is a corporation organized under the laws of New York with its principal place of business located in Melville, Suffolk County, New York.

8. Defendant is engaged in manufacturing and distributing, "including through and/or in connection with its subsidiaries and affiliated and related companies," Halloween costumes and accessories. Defendant further claims to be the largest manufacturer and designer of Halloween costumes in the world.

JURISDICTION AND VENUE

9. This Court has original jurisdiction over the claims asserted herein under the Sherman Antitrust Act, 15 U.S.C. §§ 1 & 2, pursuant to 28 U.S.C. §§ 1331 and 1337, and has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367 inasmuch as those claims are so related to the federal antitrust claims as to form the same case or controversy under article III of the United States Constitution. Additionally, Card & Party seeks monetary relief under those laws above and Section 4 of the Clayton Act, 15 U.S.C. § 15.

10. This Court additionally has subject-matter jurisdiction over all claims asserted herein pursuant to 28 U.S.C. § 1332 as the parties are of diverse citizenship, plaintiff being an Illinois citizen, defendant being a citizen of New York, and the amount in controversy exceeding \$75,000, exclusive of interest and costs.

11. Venue in this matter is governed by 28 U.S.C. § 1441(a), which states that venue of a removed action is proper in “the district court of the United States for the district and division embracing the place where such action is pending.” Because this action was brought in Cook County, and because the Northern District of Illinois embraces Cook County, venue is proper in this court.

BACKGROUND

12. For over 30 years, Card & Party has been one of Defendant’s authorized retailers (Rubie’s Account #182460), purchasing hundreds of thousands of dollars’ worth of costumes and accessories, and selling, with Defendant’s knowledge and authorization, to consumers in each of its “brick and mortar” retail outlets, temporary Halloween stores, internet website, and on other web-based channels such as eBay, Amazon, and Jet.com. (A sampling of Defendant’s invoices is attached and incorporated hereto as **Group Exhibit A**. Defendant’s website listing Card & Party as an authorized retailer is attached and incorporated hereto as **Exhibit B**.)

13. In or about August 2012, facing a decline in “in-store” sales, mostly due to competition from online marketplaces such as Amazon, Card & Party entered into an agreement as a third-party seller with Amazon and began selling its inventory, *including Defendant’s brand*, on Amazon’s online marketplace (the “Amazon Marketplace” or “Marketplace”).

14. Amazon operates the website amazon.com, which is a marketplace through which Amazon and third-party sellers offer products for sale to consumers.

15. Third-party sellers who offer products through the Amazon Marketplace must enter into a contract with Amazon, to which agreement both parties are bound. (Amazon Services, Business Solutions Agreement, or “the BSA”). (A copy of the BSA is attached and incorporated hereto as **Exhibit C**.)

16. Pursuant to the BSA, third-party sellers are entitled to list a product they own on Amazon's Marketplace product detail pages, where numerous offerors/offers compete for numerous customers simultaneously. Amazon is compensated through various fees that touch every transaction made by third-party sellers in the Amazon Marketplace, including but not limited to monthly subscription fees, selling fees, per-item fees, service fees, high-volume listing fees, and refund administrative fees. (**Ex. C**).

17. Many brands on Amazon, including Defendant's, utilize both Seller and Vendor accounts, meaning that Amazon and such brands have both supplier-seller and horizontal-competitor relationships in the relevant market at the same time.

18. Defendant sells its brand of costumes to Amazon and in turn Amazon sells these costumes to consumers. As such, Amazon, when selling Defendant's brand, is in a horizontal relationship with Card & Party.

19. Defendant also sells costumes to third-party retailers who in turn sell those costumes to consumers on the Amazon Marketplace.

20. Defendant is also a dual-distributor, and as such, competes directly at the retail level with Card & Party on its own and by and through its subsidiaries, including but not limited to entities such as BuySeasons.com, BuyCostumes.com, and CostumeSuperCenter.com, all of which are registered, active, third-party sellers on Amazon and are all "authorized" to sell Defendant's brand of costumes.

21. Certain manufacturers and sellers, often the holders of intellectual properties associated with brands and products ("rightsholders"), have in recent years developed methods of restraining competition in the online market for retail sales. These methods entail some

rightsholders misusing intellectual property rights as a vehicle to boycott disfavored third-party sellers or specific products that such third-party sellers seek to list and sell on Amazon.

22. Defendant owns the intellectual property rights to the Rubie's brand of costumes and has registered that brand on Amazon, through the Amazon Brand Registry ("Brand Registry"). As such, Defendant is given complete influence and control over their brand, e.g., which sellers are allowed to sell which products on Amazon. (A section of Amazon's Brand Registry website entitled Progress Report is attached and incorporated hereto as **Exhibit D.**)

23. Defendant, in conjunction with Amazon, is able to monitor, police, and enforce who sells its brand on Amazon, through the use of the Brand Registry. As a result, third party sellers, such as Card & Party, must receive authorization from Defendant in order to sell Defendant's brand on the Amazon Marketplace.

24. Amazon's explicit policy states, however, that "Amazon respects a manufacturer's right to enter into exclusive distribution agreements for its products. However, violations of such agreements *do not constitute intellectual property rights infringement*. As the enforcement of these agreements is a matter between the *manufacturer and the resellers*, Amazon does not assist in this type of enforcement activity." (emphasis added). (Intellectual property for Rights Owner attached and incorporated hereto as **Exhibit E.**)

25. Defendant, however, has misused Amazon's Brand Registry as a pretext for limiting competition specifically, and contrary to Amazon's written policies, has used them as justification for de-listing legitimate offerings and sellers while ignoring the alleged infringer's right to re-sell lawfully acquired goods.

26. Defendant has used the Brand Registry to monitor, police, and enforce unlawful restraints of trade.

27. Defendant has misled Amazon into believing that Card & Party is not an authorized retailer, and as a result, Card & Party has been completely restricted from selling Defendant's brand on the Amazon Marketplace.

28. The stated purpose of Amazon's Brand Registry is to ". . .prohibit the sale of counterfeit products. . .improve the ways we detect and prevent counterfeit products from reaching our customers. . . [and] protect intellectual property rights. . ." (**Ex. D.**)

29. None of these stated purposes apply to Card & Party, as Card & Party has been an authorized retailer for over 30 years and has lawfully purchased its inventory from Defendant. Further, Card & Party has not been subject to any announced resale policy restricting or limiting its channels of distribution, location, or resale prices.

30. In order to list Defendant's brand on the Amazon Marketplace, Amazon requires certain forms of proof of "authorization" such as an invoice dated within 180 days or a "letter from Rubie's authorizing you to sell their products." (Communications between Card & Party and Amazon regarding the Brand Approval Request for Rubie's is attached and incorporated hereto as **Exhibit F**; Amazon Intellectual Property Policy is attached and incorporated hereto as **Exhibit G**; Amazon's Selling Application for Brand (Rubie's) is attached and incorporated hereto as **Exhibit H.**)

Defendant's Misuses of the Brand Registry and Tortious Conduct

31. Prior to 2018, Card & Party sold Defendant's brand of Halloween costumes on Amazon. (An example of a previous sale of Defendant's brand is attached hereto and incorporated as **Exhibit I.**)

32. On information and belief, in or about 2018, Defendant registered its brand on the Amazon Brand Registry.

33. On or about January 29, 2018, Card & Party attempted to continue to sell Defendant's brand on the Amazon Marketplace.

34. On or about January 30, 2018, Amazon denied Card & Party's access to sell Defendant's brand, noting that Card & Party had not submitted the required documents; invoices within 180 days or a blanket Letter of Authorization.

35. On or about February 14, 2018, Card & Party submitted invoices clearly indicating that Card & Party had purchased Defendant's brand directly from Defendant.

36. However, Amazon denied Card & Party the right to sell Defendant's brand unless and until authorization was received from Defendant.

37. On or about February 15, 2018, Card & Party contacted Defendant to request a Letter of Authorization to sell on the Amazon Marketplace.

38. On or about February 16, 2018, an agent of the Defendant responded to Card & Party's request as follows: "I'll be more than happy to provide you with an authorization letter for Amazon but first, we need the following: (1) Your Amazon Merchant ID #; (2) The name(s) you sell under in Amazon (3) The name, phone # and e-mail of your company's administrator who handles the Amazon website."

39. On or about March 7, 2018, Card & Party responded with all of the above requested information.

40. On or about March 7, 2018, Defendant responded via email that "[p]er Amazon's guidelines, we're not able to provide a blanket letter and can only give you a letter listing items that have been invoiced this year and the year before providing the item #s, sizes & quantity purchased. By reviewing your account, it looks like the last time you placed an order that

actually shipped was back in 2015 and therefore, we're not able to provide you an authorization letter at this time. I apologize for the inconvenience."

41. Defendant's reasoning was false, and unlawful. Card & Party received Letters of Authorization from numerous other manufacturers, for costumes purchased outside the 180-day window, which Card & Party then submitted to Amazon resulting in immediate access to the Amazon Marketplace.

42. On or about March 7, 2018, Card & Party responded to Defendant's pre-textual refusal with the following: "Why, can't I have the right to sell items purchased from you previously. I have products of yours that are salable from many years ago. I should not reasonably be hindered from selling those products as a legitimate retailer."

43. On or about March 7, 2018, Defendant again responded, again falsely passing blame to Amazon, and stating "[a]s I mentioned, Amazon is the one setting the guidelines and we're not able to get involved at this point."

44. This response was false and pre-textual because Defendant had registered its brand on the Amazon Marketplace knowing full well that it had authority and control over which sellers may sell their brands on the Amazon Marketplace.

45. Further, numerous other retailers, including Defendant, have been granted access to the Amazon Marketplace to sell Defendant's brand on the Amazon Marketplace, in the same fashion.

46. Amazon has set no such guidelines as Defendant claims.

47. Amazon does not restrict rights holder's issuance of Letters of Authorization.

48. Amazon does not require that the items be sold or delivered to the reseller within the previous two years in order for a rights holder to issue a Letter of Authorization.

49. On or about March 7, 2018, Card & Party sent a demand letter to Defendant requesting a Letter of Authorization to sell products purchased from Defendant on the Amazon Marketplace.

50. On or about March 7, 2018, David Siegel (“Siegel”) Intellectual Property Counsel for Defendant, contacted Card & Party CEO Charles Schwartz (“Schwartz”) by phone.

51. Siegel told Schwartz, on that phone call, that Defendant was “not in the business of authorizing retailers who no longer do business with us.” This reasoning did not comport with one explanation given by Defendant that “Amazon is the one setting the guidelines,” but did comport with the unlawful reasoning given by Defendant that access would only be granted if Card & Party continued purchasing goods from Defendant.

52. Defendant manifested an unlawful, malicious, and pre-textual reason for denying Card & Party’s ability to sell Defendant’s brand on the Amazon Marketplace, at odds with Amazon’s Brand Registry guidelines, which are in effect solely to curb the sale of counterfeit goods and to protect intellectual property rights.

ANTICOMPETITIVE HARM

The Nature of Competition at Issue

53. Defendant is the largest manufacturer and distributor of Halloween costumes in the world.

54. Defendant maintains numerous exclusive licenses for “must have” Halloween costumes including but not limited to costumes such Batman, Superman, Barbie, and Star Wars.

55. Approximately 55% of Defendant’s sales come from exclusively licensed costumes.

56. Card & Party is full-scale party supply and Halloween store that competes on service and price with an emphasis on having a wide-array of competing products that allow it to rely on volume sales.

57. Card & Party's conduct stimulates both *interbrand* competition and *intra-brand* competition.

Relevant Product Markets

58. The product market relevant to the antitrust claims asserted below is the market for retail sales of licensed Halloween costumes.

59. There is a distinct product market for licensed Halloween costumes. Defendant maintains exclusive manufacturing licenses for various imperative trademarks such as Disney, Marvel, Universal Studios, Warner Bros., and many more. For example, a consumer wishing to purchase a Superman costume has but one option; Defendant's brand of Halloween costumes.

60. Consumers will not substitute licensed Halloween costumes for non-licensed costumes. Simply, licensed Halloween costumes are not reasonably interchangeable with costumes in another category because they have a distinct consumer demand. A small but significant increase in price will not cause consumers to substitute a licensed costume for an unlicensed costume. For example, a price increase in a Superman costume, a type of licensed Halloween costume, will not cause customers to instead buy a generic "superhero" costume.

61. The relevant geographic market for the antitrust claims below is the Amazon Marketplace within the United States.

Anti-Competitive Conduct

62. Defendant, as a dual-distributor, has market power in both the manufacturing of and distribution of licensed Halloween costumes in the relevant market.

63. Defendant, having exclusive licenses for its “must have” licensed costumes has market power in the manufacturing of licensed Halloween costumes.

64. Defendant has used its monopoly power as a manufacturer and exclusive license holder to leverage and obtain or continue to obtain market power in the retail market for licensed Halloween costumes.

65. Defendant has engaged in exclusionary conduct, through the use of the Amazon Brand Registry, in an attempt to artificially raise prices, restrict output, and limit consumer choice to on the Amazon Marketplace, by removing Card & Party’s access to the Amazon Marketplace.

66. Card & Party cannot obtain similar licensed Halloween costumes from another manufacturer to compete, since Defendant maintains *exclusive* licenses for various “must have” costumes.

67. Defendant has engaged in such exclusionary conduct without any announced policy regarding territorial restrictions, minimum resale prices, or any other restraint. Further, Defendant, in its retail capacity, as well as other competitors, including Amazon, are not subject to the same exclusionary conduct on the Amazon Marketplace.

68. Defendant has engaged in a course of action designed to eliminate Card & Party from the Amazon Marketplace, with the specific intent to achieve and then exploit monopoly power in the relevant market.

69. By eliminating Card & Party, Defendant seeks to (1) prevent the introduction of, and continued competition from Card & Party; (2) raise prices to consumers; (3) restrict output; and (4) limit consumer choice.

70. Further, Defendant has engaged in anticompetitive conduct by communicating false and misleading information about Card & Party to Amazon which had more than a *de minimis* effect on competition as the false representations directly led to Card & Party being restricted from the Amazon Marketplace. The communications were false, material, induced reliance, and the harm resulting therefrom continues to this day.

71. Further, the false statements were not susceptible of “neutralization” as Card & Party’s repeated pleadings with Amazon fell on deaf ears. Card & Party tried on numerous occasions to convince Amazon that it was an authorized retailer and not selling counterfeit goods, to no avail.

72. These false communications were made to Amazon, and in-turn consumers, who are wholly without knowledge of the subject matter.

73. Defendant’s conduct has resulted in its gaining market share as a retailer in the relevant market as well as increased market share for Amazon as a retailer of Defendant’s costumes.

74. Defendant’s justification for imposing the restraints are not pro-competitive; Defendant asserted, on more than one occasion, that it’s reason for excluding Card & Party was because Card & Party had not purchased costumes from Defendant in several years. This reasoning is unlawful as a tying arrangement and is simply an attempt to mask one type of anticompetitive conduct with another.

75. Further, it is against Defendant’s economic interest as a manufacturer to limit the output of its retailers such as Card & Party, demonstrating that Defendant as a retailer intends to monopolize the relevant market by eliminating competition.

76. This irrational behavior exemplifies that Defendant was really wearing its “retail hat” when it decided to exclude Card & Party from access to Amazon.

77. As recently as 2017, Defendant has acquired a competing online retailer, BuySeasons.com, which operates numerous online retail websites and is, unsurprisingly, authorized by Defendant to sell on the Amazon Marketplace. Defendant has also acquired competing costume manufacturers such as Ben Cooper (which held a DC Comics’ license) as well as Forum Novelties. Defendant has done so in order to increase market share, reduce competition, and achieve monopoly power.

78. In short, Defendant, rather than capitalizing on increased sales to retailers, has chosen to sacrifice certain financial gain and instead seeks out monopolistic profits, at the retail level, by driving competition out of the relevant market with its exclusionary conduct.

79. Defendant’s conduct has had an actual detrimental effect on competition in the relevant market by corrupting and distorting offerings on the Amazon Marketplace. Card & Party, which would have competed on price, has been completely restricted from offering Defendant’s brand for sale on the Amazon Marketplace.

80. Further, Defendant’s exclusionary conduct has caused Card & Party to forego numerous sales on the Amazon Marketplace which would have led to higher ratings, an increase in customer reviews, and a better fulfillment rate, all of which clout Card & Party’s ability to sell *competing* brands effectively on the Amazon Marketplace.

81. This is so because Amazon’s algorithm takes all of the aforementioned factors into consideration when deciding which third party sellers should be shown more prominently in a search for products on the Amazon Marketplace. Thus, Defendant’s actions have not only chilled *intradbrand* competition but also *interbrand* competition.

82. Amazon's search algorithm takes into consideration, among other factors, the following: (1) sales rank (the most important ranking factor) wherein more sales means higher ranking, in turn leading to more sales; (2) the amount and quality of customer reviews; and (3) price.

83. Defendant's actions, in conjunction with the use of the Amazon's Brand Registry, amounts to a concerted horizontal boycott of Card & Party's access to an essential facility, the Amazon Marketplace.

84. Defendant and Amazon are both horizontal competitors of Card & Party's for the resale of Defendant's brand of Halloween costumes. As such, Defendant's actions are *per se* unlawful restraints.

Amazon is an Essential Facility for Online Retail Sales in the United States

85. As of July 2018, Amazon accounts for 49.1% of all online retail spend and 5% of all retail sales in the United States. By comparison, Amazon's next biggest competitor, eBay.com, has only 6.6% of online retail spend in the United States.¹

86. Amazon itself sells about half, and third-party sellers sell about half, of the items sold in the Amazon Marketplace in the United States. Amazon is thus both a supplier of Marketplace services to and a direct competitor, when products are "sold by Amazon," of other sellers seeking to sell the same exact products.

87. When a third-party seller wants to offer a product for sale on Amazon.com, the seller must first determine whether the product already exists in the Amazon.com catalog. Multiple sellers can offer the same product for sale. If the same product already exists in the catalog, the seller can add specific details – including price and product condition and any

¹ Lunden, Ingrid, *Amazon's Share of the US e-commerce market is now 49%, or 5% of all retail spend*. Available at <https://techcrunch.com/2018/07/13/amazons-share-of-the-us-e-commerce-market-is-now-49-or-5-of-all-retail-spend/>.

additional product details – and their offering is listed, along with other sellers of the same product, on the same product detail page.

88. Allowing all sellers to list the same product on the same page generates intense price competition that is highly beneficial to consumers, who understand that Amazon presents the Marketplace’s entire array of a given product on the same product detail page.

89. Eliminating low-priced competitors, such as Card & Party, is injurious to competition and to consumers. Many or most online buyers view Amazon as one-stop shopping and look no further. Such consumer behavior is fundamental to Amazon’s business plan.

90. Further, Amazon’s “Prime” memberships induce consumers’ loyalty. One study found that 63% of Amazon Prime members carry out a paid transaction on Amazon in the same visit, in contrast to 13% of non-Prime members. Less than 1% of Amazon Prime members are likely to consider competing retail sites in the same shopping session.² Thus, Amazon serves as a starting point for 44% of United States online shoppers, in their searches for goods, rather than traditional internet search engines such as Google and Yahoo.³

91. Amazon controls key critical infrastructure for retail e-commerce which are difficult if not impossible for new entrants to replicate or compete against.

92. Amazon has extended its dominance over other retailers and competitors by creating and implementing the Fulfillment-by-Amazon (“FBA”) service and establishing its own massive physical delivery capacity.

² Clare O’Connor, *Walmart and Target Being Crowded Out Online by Amazon Prime*, FORBES (Apr. 6, 2018, 12:59 PM), <http://www.forbes.com/sites/clareoconnor/2015/04/06/walmart-and-target-being-crowded-out-online-by-amazon-prime> [http://perma.cc/CM2E-GPER].

³ Jeevan Vasagar & Alex Barker, *Amazon Is Our Biggest Search Rival, Says Google’s Eric Schmidt*, FIN. TIMES (Oct. 13, 2018), <http://www.ft.com/cms/s/0/748bff70-52f2-11e4-b917-00144feab7de.html> [http://perma.cc/3PHW-77EW].

93. FBA allows third party sellers to ship their goods to Amazon, for a fee, whereby Amazon will fulfill orders received by the seller through Amazon's own physical logistics services. Amazon is able to do so with through its massive discounts in shipping costs and through the use of its own delivery services that rival, if not exceed, those of UPS or FedEx.

94. Thus, retail competitors are left with two unpleasant choices: either try to compete with Amazon at a disadvantage (if Amazon is horizontally situated for a specific transaction) or become reliant on a competitor to handle fulfillment and logistics, for a fee.

95. Defendant controls Card & Party's access to Amazon to sell Defendant products through the Amazon Brand Registry.

96. Defendant, as a dual-distributor, is in direct competition with Card & Party in the relevant market. It is not feasible for Card & Party to duplicate the Amazon Marketplace, one of the largest and most sophisticated marketplaces in the world.

97. Defendant has denied Card & Party access to Amazon when granting Card & Party access to Amazon would clearly be feasible for Defendant.

98. Amazon is an essential facility because access to it is required in order to compete in the relevant market. In order to have a meaningful opportunity to sell all of its inventory of licensed Halloween costumes, Card & Party must have access to the Amazon Marketplace.

Market Harm

99. Defendant, through its control of access to Amazon, via the Brand Registry, has substantially impaired the ability of Card & Party to compete with Defendant and other retailers making use of the Amazon Marketplace.

100. Further, Defendant has used its power to essentially arbitrarily admit or deny competing retailers, such as Card & Party, access to the Amazon Marketplace by conditioning

such access on continued purchasing of its products. This anticompetitive conduct amounts to a tying arrangement which is presumptively illegal.

101. Defendant is unlawfully exercising its control over the Amazon Marketplace in an attempt to drive Card & Party out of business, distort competition for its own products, limit competition on price thereby artificially increasing prices, reducing output, and stifling consumer choice. Defendant has acted with the specific intent to monopolize the market for licensed Halloween costumes and with the specific intent to control competition on the Amazon Marketplace.

102. Defendant has abused its control of access to the Amazon Marketplace to avoid having to fairly compete with Card & Party (and other retailers) on level playing field. Instead, Defendant excludes Card & Party from reaching consumers through the Amazon Marketplace as a means of stifling competition in the market for licensed Halloween costumes and achieving other anticompetitive goals.

103. Such an exclusion is not reconcilable with the economic purpose of the Amazon Marketplace, a two sided market, where value of services increases as the number of participants on both sides of the platform increases.

104. Defendant's conditioning of access to the Amazon Marketplace and the corresponding boycott of Card & Party is an anticompetitive means of acquiring and maintaining monopoly power in the market for licensed Halloween costumes.

105. Defendant's conduct, left unchecked, will ultimately force retailers like Card & Party out of business and will prevent others from entering the market. Thus, in time, consumers will have but one retailer to utilize; the Defendant.

106. As Defendant pushes competing retailers out of the market, Defendant is abler to impose higher prices and other onerous terms on retailers, including terms that may ultimately make it impossible for retailers to compete effectively with Defendant.

107. In order to stay afloat, competing retailers such as Card & Party, will have to increase prices, in other brands, to compensate for the loss of revenue.

108. Defendant has abused its intellectual property rights by falsely communicating to Amazon, and in turn consumers, that Card & Party is infringing upon Defendant's trademarked products with the specific intent of diverting Card & Party's potential customers to Defendant.

109. Card & Party's exclusion from Amazon, because of these "bad faith" infringement claims, has diverted customers from Card & Party to the Defendant. This harm was shared by consumers who endured higher prices, restricted output, and a lacking consumer choice.

Anticompetitive Injury to Card & Party

110. Defendant's actions, through control of the Amazon Marketplace for its licensed Halloween costumes, constitutes a restriction on competition that has handicapped Card & Party's ability to meaningfully compete with Defendant.

111. Defendant's conduct has severely damaged Card & Party and its business in many ways and will continue to do so, especially in light of the fact that Card & Party was excluded from selling Defendant's brand during the most recent Halloween season in 2018.

112. Defendant has lost sales and profits as a consequence of Defendant's exclusionary conduct and the injuries are the direct and proximate result of Defendant's anticompetitive actions.

COUNT I
CONCERTED ACTION IN VIOLATION OF 15 U.S.C § 1

113. Card & Party repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

114. Defendant, in conjunction with Amazon, used Amazon to monitor, police, and otherwise enforce Defendant's denial of Card & Party's access to the Amazon Marketplace, constituting concerted action.

115. Amazon and Defendant are both horizontal competitors of Card & Party in the market for licensed Halloween costumes on the Amazon Marketplace.

116. The combination between Defendant and Amazon is an unreasonable restraint of trade since it is a *per se* illegal horizontal group boycott of Card & Party which completely restricts Card & Party from competing with Defendant and Amazon in the market for licensed Halloween costumes on the Amazon Marketplace.

117. Defendant has also engaged in illegal tying by conditioning access to the Amazon Marketplace on the continued purchase of goods from Defendant.

118. Defendant's unlawful contract, combination or conspiracy had the following direct, substantial, and reasonably foreseeable effects of commerce in the United States: (1) prices charged to, and paid by, consumers were artificially inflated; (2) there was a restriction of output resulting from the unlawful combination to restrict Card & Party from the Amazon Marketplace; and (3) there was a reduction in consumer choice as a result of Card & Party's restriction from the Amazon Marketplace.

119. Defendant's unlawful combination affects interstate commerce and injures competition in multiple states.

120. As a direct and proximate result of Defendant's unlawful combination to restrain trade, Card & Party has suffered antitrust injury and damages, including the loss of sales and revenues generated from the Amazon Marketplace, as well as other damages to its business.

WHEREFORE, Card & Party prays for judgment against Defendant Rubie's Costume Company, Inc. on Count I as follows:

A. Awarding Card & Party all damages to which it is entitled under federal antitrust laws, including treble damages, reasonable costs, and attorneys' fees pursuant to 15 U.S.C. § 1, and 15 U.S.C. § 15; and

B. Granting such further relief as the Court deems just and proper.

COUNT II UNLAWFUL MONOPOLIZATION

121. Card & Party repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

122. The market for licensed Halloween costumes constitutes the relevant product market, and, the Amazon Marketplace in the United States, constitutes the relevant geographic market under the antitrust laws.

123. Defendant has monopoly power in the market for licensed Halloween costumes sold in the United States on the Amazon Marketplace.

124. Defendant has excluded Card & Party from access to sell Defendant's brand on the Amazon Marketplace, an essential facility, through deceit, "bad faith" false infringement claims, illegal tying, monopoly leveraging, and other anticompetitive conduct.

125. By refusing to deal with Card & Party, through the use of Amazon's Brand Registry, and conditioning access to the Amazon Marketplace upon purchase of Defendant's

products, and other exclusionary and anticompetitive acts, Defendant has unlawfully acquired and maintained its monopoly power in the market for licensed Halloween costumes on the Amazon Marketplace, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

126. Defendant could not have acquired or maintained its monopoly power in the market for licensed Halloween costumes but for its restrictions on participation on the Amazon Marketplace, its coercive and exclusionary concerted activity and refusals to deal, and other anticompetitive conduct. Thus, its monopolization is not due to growth or development as a consequence of a superior product, business acumen, or historic accident.

127. Defendant's monopolization has injured and will continue to injure competition in the aforementioned market.

128. Defendant's exclusionary and anticompetitive acts effect interstate commerce and injures competition in multiple states.

129. As a direct and proximate result of Defendant's acts of monopolization and monopoly maintenance, Card & Party has suffered antitrust injury and damages, including the loss of sales and revenues generated from the Amazon Marketplace, as well as other damages to its business.

WHEREFORE, Card & Party prays for judgment against Defendant Rubie's Costume Company, Inc. on Count II as follows:

A. Awarding Card & Party all damages to which it is entitled under federal antitrust laws, including treble damages, reasonable costs, and attorneys' fees pursuant to 15 U.S.C. § 2, and 15 U.S.C. § 15; and

B. Granting such further relief as the Court deems just and proper.

COUNT III
UNLAWFUL ATTEMPTED MONOPOLIZATION

130. Card & Party repeats and re-alleges Paragraphs 1-112 above as if fully set forth herein.

131. Defendant has excluded Card & Party from access to sell Defendant's brand on the Amazon Marketplace, controlled by Defendant, through the Brand Registry.

132. By refusing access to Card & Party, through the use of Amazon's Brand Registry, and conditioning access to the Amazon Marketplace upon purchase of Defendant's products, and other exclusionary and anticompetitive acts, Defendant has unlawfully attempted to acquire monopoly power in the market for licensed Halloween costumes on the Amazon Marketplace, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

133. Because of Defendant's monopoly control of access to the Amazon Marketplace and its unilateral ability to exclude competitors from the Amazon Marketplace, which is essential to market participation, there is a dangerous probability that Defendant will be able to leverage its position to gain and maintain monopoly power in the markets for licensed Halloween costumes.

134. Defendant has acted with the specific intent of monopolizing the markets for licensed Halloween costumes on the Amazon Marketplace.

135. Defendant's attempted monopolization has injured and will continue to injure competition.

136. Defendant's exclusionary conduct and anticompetitive acts effect interstate commerce and injures competition in multiple states.

137. As a direct and proximate result of Defendant's attempted monopolization, Card & Party has suffered antitrust injury and damages, including the loss of sales and revenues generated from the Amazon Marketplace, as well as other damages to its business.

138. Card & Party will continue to suffer additional damage in the future if Defendant is permitted to continue its monopolistic conduct.

WHEREFORE, Card & Party prays for judgment against Defendant Rubie's Costume Company, Inc. on Count III as follows:

A. Awarding Card & Party all damages to which it is entitled under federal antitrust laws, including treble damages, reasonable costs, and attorneys' fees pursuant to 15 U.S.C. § 2, and 15 U.S.C. § 15; and

B. Granting such further relief as the Court deems just and proper.

**COUNT IV
VIOLATION OF THE ILLINOIS ANTITRUST ACT (740 ILCS 10/3)**

139. Card & Party repeats and re-alleges Paragraphs 1-112 above as if fully set forth herein.

140. Defendant exercises exclusive control over access to sell its brand on the Amazon Marketplace. The Amazon Marketplace is a critical infrastructure for the sale of licensed Halloween costumes or, more generally, market access.

141. The Amazon Marketplace cannot be practically or reasonably duplicated, and there is no reasonable alternative to the Amazon Marketplace that has such market access.

142. Defendant has excluded Card & Party from selling Defendant's brand from the Amazon Marketplace unless they continue to purchase goods from the Defendant, as a precondition to access.

143. Defendant has engaged in this exclusionary action despite the fact that it could, if it elected to do so, feasibly provide access to the Amazon Marketplace.

144. Defendant secured monitoring, policing, and adherence of its refusal to allow Card & Party access to the Amazon Marketplace in conjunction with Amazon through Amazon's Brand Registry.

145. Through its exclusionary, coercive, deceitful, and anticompetitive conduct Defendant has monopolized and unlawfully attempted to acquire a monopoly in the market for licensed Halloween costumes on the Amazon Marketplace in Illinois in violation of Section 3 of the Illinois Antitrust Act. 740 ILCS 10/3(3).

146. The market for licensed Halloween costumes constitutes a relevant product market under the Illinois Antitrust Act.

147. Defendant entered into coercive and exclusionary agreements related to the access of the Amazon Marketplace with the specific intent of monopolizing the market for licensed Halloween costumes in Illinois.

148. Defendant's monopolization and attempted monopolization has injured and will continue to injure competition.

149. As a direct and proximate result of Defendant's monopolization and attempted monopolization, Card & Party has suffered antitrust injury and damages, including the loss of sales and revenues generated from the Amazon Marketplace, as well as other damages to its business.

150. Card & Party will continue to suffer additional damage in the future if Defendant is permitted to continue its monopolistic conduct.

WHEREFORE, Card & Party prays for judgment against Defendant Rubie's Costume Company, Inc. on Count IV as follows:

A. Awarding Card & Party all damages to which it is entitled under state antitrust laws, including treble damages, reasonable costs, and attorneys' fees pursuant to 740 ILCS 10/7 *et. seq.*; and

B. Granting such further relief as the Court deems just and proper.

**COUNT V
VIOLATION OF THE ROBINSON-PATMAN PRICE DISCRIMINATION ACT**

151. Card & Party repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

152. Defendant has engaged, and continues to engage, in the practice of discrimination with respect to available promotional and marketing assistance in violation of 15 U.S.C §13(e).

153. Defendant is engaged in, and the acts and practices described herein are in and affect, interstate commerce. Defendant has sold its costumes in commerce across state lines in the United States and Card & Party has purchased Defendant's costumes in interstate commerce from Defendant for resale.

154. Defendant sold costumes of like kind and quality to those purchased by Card & Party to certain competing retailers such as Amazon, and other entities currently selling Defendant's brand on Amazon, and provides promotional services, such as access to the Amazon Marketplace, that it does not make available to Card & Party.

155. At all times relevant, Defendant, as well as Amazon and other entities currently selling Defendant's brand on Amazon, are competitors of Card & Party in the retail market for licensed Halloween costumes.

156. The discriminatory promotional practices by Defendant placed Card & Party at a competitive disadvantage with such favored retailers, who were able to purchase the same costumes with more favorable promotional services not available to Card & Party. Defendant engaged in such discrimination with the purpose and effect of injuring competition, maintaining its monopoly or near monopoly position and without just cause or excuse.

157. As a direct and proximate result, Card & Party has suffered damages including, but not limited to, lost business, lost income, and lost profits in an amount in accordance with proof at trial. Such damages are ongoing.

158. Under the provisions of 15 U.S.C. § 15, Card & Party is entitled to bring this action and to recover treble damages, costs of suit, and attorneys' fees.

WHEREFORE, Card & Party prays for judgment against Defendant Rubie's Costume Company, Inc. on Count V as follows:

- A. Awarding Card & Party all damages to which it is entitled under federal law, including treble damages, reasonable costs, and attorneys' fees pursuant to 15 U.S.C. § 15; and
- B. Granting such further relief as the Court deems just and proper.

**COUNT VI
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

159. Card & Party repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

160. Card & Party and Amazon have an existing valid and enforceable contract between them, namely the Amazon Business Solutions Agreement ("BSA"), that states in relevant part that the agreement ". . . CONTAINS THE TERMS AND CONDITIONS THAT

GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON.” (Ex. C).

161. In accordance with that agreement, Card & Party represents that it has the “rights, licenses, and authority to enter into this Agreement; [and] (c) any information provided or made available is accurate and complete . . .” (Ex. C).

162. No later than February 15, 2018, Defendant was aware of the contract between Card & Party and Amazon whereby Card & Party sold products, as a third-party seller, to consumers on the Amazon Marketplace.

163. Defendant intentionally and unjustifiably induced a breach of said contract by falsely representing to Amazon that Card & Party was not an authorized seller of the Defendant’s brand.

164. This material misrepresentation resulted in Card & Party being restricted from selling Defendant’s brand on the Amazon Marketplace.

165. Defendant’s misuse of the Amazon Brand Registry, as a means misrepresent to Amazon that Card & Party was not an authorized retailer, made performance of the contract impossible in that Card & Party was: (1) prohibited from selling the Defendant’s brand to consumers through the Amazon Marketplace; and (2) was unable to provide the requisite authority and accurate product information in accord with the parties’ contract.

166. Defendant’s misrepresentations have induced Amazon to rely on Defendant’s statements and thereby breach the BSA by restricting Card & Party from selling Defendant’s brand on the Amazon Marketplace notwithstanding that Card & Party is, at all times relevant, an authorized retailer.

167. Defendant has interfered with Card & Party's recognized contractual right with Amazon to sell, among other products, Defendant's brand on the Amazon Marketplace, by maliciously misleading Amazon into believing that Card & Party is either a (1) counterfeiter; (2) trademark infringer; or (3) does not have the requisite license to sell the Defendant's brand – none of which are true.

168. Knowing that Card & Party and Amazon had entered into a contract to sell products, including Defendant's brand, and with knowledge that Card & Party was in fact an authorized retailer, Defendant interfered with this contractual relationship by wrongfully implying to Amazon that Card & Party was not an authorized retailer, thereby making performance of the BSA impossible.

169. As a direct and proximate result of Defendant's actions thereof, Card & Party has been damaged in its business through, among other things, the loss of revenues and profits attributable to the disruption of the aforementioned contract in an amount presently unknown but to be proven at the time of trial.

WHEREFORE, Plaintiff Card & Party prays for judgment against Defendant on Count VI as follows:

- A. For an award of compensatory, and special damages, including particularly loss of profits, for tortious interference with a contract in amounts to be proven at trial;
- B. Costs as allowed by law; and
- C. Such other and further relief as this Court deems just and appropriate.

COUNT VII
TORTIOUS INTERFERENCE WITH A BUSINESS EXPECTANCY
(IN THE ALTERNATIVE TO COUNT VI)

170. In the event a contract is not found to exist, Card & Party alleges in the alternative to Count VI and repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

171. Card & Party had a reasonable expectation of entering into a valid business relationship with Amazon in order to sell, among other products, Defendant's brand of Halloween costumes.

172. Card & Party also had a reasonable expectation of entering into a valid relationship with consumers, through the use of the Amazon Marketplace, in the form of sale proceeds derived therefrom.

173. Defendant, at all times relevant, had explicit knowledge of the expectancy that Card & Party wished to sell Defendant's brand on the Amazon Marketplace.

174. Defendant intentionally and unjustifiably interfered with Card & Party's expectancy by abusing Amazon's Brand Registry in order to falsely misrepresent to Amazon that Card & Party was not an authorized retailer of Defendant's brand, thereby disrupting the relationship between Card & Party and Amazon, as well as the relationships between Card & Party and consumers.

175. Defendant's misrepresentations have induced Amazon to rely on these misrepresentations which has resulted in Amazon wrongfully restricting Card & Party from selling Defendant's brand on the Amazon Marketplace.

176. As a direct and proximate result of Defendant's interference thereof, Card & Party has been damaged in its business through, among other things, the loss of revenues and profits

attributable to the disruption of the aforementioned business expectancy in an amount presently unknown but to be proven at the time of trial.

WHEREFORE, Plaintiff Card & Party prays for judgment against Defendant on Count VII as follows:

A. For an award of compensatory and special damages, including particularly loss of profits, for tortious interference with a contract in amounts to be proven at trial;

B. Costs as allowed by law; and

C. Such other and further relief as this Court deems just and appropriate.

COUNT VIII
ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

177. Card & Party repeats and re-alleges Paragraphs 1-112 above as fully set forth herein.

178. Defendant made false representations and omissions of material fact to Amazon, and consumers on the Amazon Marketplace, through use of the Amazon Brand Registry, that Card & Party was not an authorized retailer, which by default conveyed that Card & Party was either: (1) selling counterfeit goods; (2) infringing upon Defendant's trademark; or (3) did not have the requisite license to sell the Defendant's brand.

179. Card & Party was not attempting to sell counterfeit goods and was in fact attempting to sell costumes purchased from Defendant.

180. Card & Party is and was not infringing on Defendant's trademark.

181. Card & Party is authorized to sell the goods it purchased from the Defendant.

182. Defendant made the aforementioned representations knowing that Amazon would rely upon said representations and with the intent that Amazon would in turn wrongfully restrict Card & Party from selling Defendant's brand.

183. Defendant has knowingly misrepresented that Card & Party is not an authorized retailer with the deliberate and express purpose of disparaging the goods, services, or business of Card & Party in order to cause confusion or misunderstanding as to the approval or certification of said goods or services.

184. Defendant's representations were made in trade or commerce, namely, falsely using the Amazon Brand Registry to misrepresent to Amazon and consumers that Card & Party was not authorized to sell Defendant's brand.

185. Defendant's actions implicate consumer protection concerns. Defendant's misrepresentations are directed to the market generally in that Defendant's misrepresentations have distorted market competition, thereby increasing prices for consumers purchasing Defendant's brand. This particular consumer protection harm has caused damages thereto in the form of reduced competition and resulting increased prices in Illinois and nationwide.

186. Defendant's misrepresentations were directed at Amazon and the Amazon Marketplace which is a platform for which consumers obtain product information and make purchases.

187. Defendant's misrepresentations were the proximate and direct cause of Amazon wrongfully restricting Card & Party from selling Defendant's brand on the Amazon Marketplace and in turn Card & Party's financial harm.

188. Defendant's actions have directly and proximately caused harm to the marketplace, in general, by conveying misinformation to consumers on the Amazon Marketplace which has resulted in reduced competition and higher prices.

189. As a direct and proximate result of Defendant's misrepresentations thereof, Card & Party has been damaged in its business through, among other things, the loss of revenues and profits attributable to the misrepresentations made to Amazon, in an amount presently unknown but to be proven at the time of trial.

WHEREFORE, Plaintiff Card & Party prays for entry of a judgment in its favor and against Defendants on Count VIII in an amount to be determined at trial, attorneys' fees, costs of suit, and all other relief the Court deems appropriate.

PRAYER FOR RELIEF

WHEREFORE, Card & Party prays for the following relief:

- A. Judgment for Card & Party and against Defendant in an amount to be determined at trial, including treble damages under Federal and State antitrust laws where allowed and maximum other penalties and damages where allowed by law;
- B. That Defendant be ordered to pay interest, costs and reasonable attorneys' fees to Card & Party; and
- C. That the Court grants Card & Party such other and further relief as the Court deems just.

Dated: February ___, 2019

Respectfully submitted,

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